

Appl. No. 10/764,215
Docket No. P-142M
Amdt. Dated October 29, 2009
Reply to Office Action mailed on August 4, 2009
Customer No. 27752

REMARKS

Claim Status

Claims 1–4 and 6–17 are pending in the present application. No additional claims fee is believed to be due. Claims 10–17 were previously withdrawn as a result of an earlier restriction requirement. No claim is amended with the present Response.

Rejection Under 35 U.S.C. § 102 Over Oliveira

Claims 1-4 and 6-9 have been rejected under 35 U.S.C. § 102(b) as being anticipated by Oliveira et al. (US Publication No. 2003/0157239)(“Oliveira”). Applicants respectfully traverse this rejection for not only the reasons previously provided in prior Responses but for the addition reasons stated herein. The controlling law in this matter is not repeated herein for the sake of brevity but is incorporated by reference from the prior Responses, particularly with respect to anticipatory rejections.

The Office Action states that Oliveira anticipates the present claims since Oliveira teaches that the soybean meal can be used for cats and dogs and because it teaches using astaxanthin. For the following reasons, Applicants respectfully disagree.

In paragraph 40 of Oliveira, it discloses that the soybean meal of its disclosure can be used as a protein and energy source in other manufactured feeds, other than fish, that include dogs and cats. As best understood by Applicants, Oliveira makes no reference therein to astaxanthin as being included in soybean meal for cats and dogs.

Oliveira, on page 5, discloses typical characteristics of soybean meal. Oliveira does not disclose astaxanthin as a component of soybean meal on page 5.

In Tables 1 and 2 of Oliveira, it discloses nine diet formulations of diets for fish feed and corresponding proximate compositions of the nine diets. As shown in Table 1, diets 1, 2, 3, and 4 include Denofa soybean meal while diets 5, 6, 7, and 8 contain AkvaSoy soybean meal, which is the soybean meal made by the disclosure of Oliveira. Importantly, diet 0 does not contain either of the soybean meals used in diets 1-8. As shown in Tables 1 and 2, each and every diet (0 through 8) contain astaxanthin, and Table 1 lists it as a “Constant ingredient”. Thus, as best understood by Applicants, even diet 0, which has zero soybean meal shown in Table 1, contains astaxanthin. The logical

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conclusion to be made is that the astaxanthin is not coming from the two soybean meals but is present in some other ingredient or is being added on its own to the diets. Therefore, as best understood by Applicants and as disclosed by Oliveira, the soybean meal of Oliveira does not contain astaxanthin.

Consequently, as best understood by Applicants, the soybean meal of Oliveira, even if used for dogs and cats, does not contribute astaxanthin to dogs and cats since it does not comprise astaxanthin, according to a fair reading of the tables and disclosure of Oliveira. Thus, even though Oliveria discloses that its soybean meal can be used for dogs and cats, no astaxanthin is part of the soybean meal, and thus Oliveira does not teach, disclose, or suggest using astaxanthin for dogs and cats through its soybean meal.

Therefore, since claim 1 of the present application is directed to, inter alia, a composition comprising astaxanthin wherein the composition is adapted for use by a companion animal and wherein the composition is selected from the group consisting of dog food compositions, cat food compositions and combinations thereof and wherein the companion animal is selected from the group consisting of dogs and cats, Oliveira fails to disclose each and every element of claim 1. As a result, Oliveira fails to anticipate the claims. Applicants respectfully request reconsideration and withdrawal of the rejection. Since each and every claim depends either directly or indirectly from claim 1, the rejection of those claims should be withdrawn for the same reasons.

CONCLUSION

This Response represents an earnest effort to place the present application in proper form and to distinguish the invention as claimed from the applied reference. In view of the foregoing, reconsideration of this application and allowance of the pending claims are respectfully requested.

Respectfully submitted,

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